

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MATTHEW HENDRIX,

Respondent,

v.

STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD77353

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 16, 2015

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Sandra C. Midkiff, Judge

JUDGES

Division III: Pfeiffer, P.J., and Witt and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Daniel J. Ross and Clayton E. Gillette
Kansas City, MO

Attorneys for Respondent,

Chris Koster, Attorney General
Shaun J. Mackelprang and Gabriel E. Harris, Assistant Attorneys General
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Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MATTHEW HENDRIX,)
)
 Respondent,)
v.) **OPINION FILED:**
) **June 16, 2015**
STATE OF MISSOURI,)
)
 Appellant.)

WD77353

Jackson County

Before Division III Judges: Mark D. Pfeiffer, Presiding Judge, and Gary D. Witt and Anthony Rex Gabbert, Judges

Matthew Hendrix pleaded guilty to murder in the second degree, armed criminal action, and burglary in the first degree. Hendrix timely filed a *pro se* Rule 24.035 motion. Hendrix's post-conviction counsel subsequently timely filed an amended motion. The amended motion alleged that Hendrix's plea counsel failed to thoroughly investigate a defense under section 552.030, and had he done so, Hendrix would not have accepted the guilty plea and would have been able to present a defense at trial based upon mental disease or defect ("NGRI defense").

After an evidentiary hearing, the motion court entered its Judgment granting Hendrix's amended Rule 24.035 motion. The motion court set aside the judgment accepting the plea and vacated the sentence imposed therein.

The State appealed, arguing as its sole point that the motion court clearly erred in granting Hendrix's motion for post-conviction relief because Hendrix failed to carry his burden at the evidentiary hearing to demonstrate that plea counsel was constitutionally ineffective for failing to investigate a possible mental disease or defect defense.

REVERSED.

Division III holds:

To succeed on an ineffective assistance of counsel claim based on inadequate investigation, the movant must specifically describe the information the attorney failed to discover, allege that a reasonable investigation would have resulted in the discovery of such information, and prove that the information would have aided or improved movant's position.

Though Hendrix presented evidence at the Rule 24.035 evidentiary hearing that he had, in the past, been diagnosed with mental health illnesses, he presented no evidence as to what further investigation by plea counsel would have demonstrated regarding an NGRI defense nor that the results of a fuller NGRI defense investigation created a reasonable probability that he would not have pleaded guilty.

Because Hendrix presented no evidence at the Rule 24.035 evidentiary hearing as to what the results of the additional investigation he claims should have been done would have demonstrated, Hendrix has failed to meet the prejudice prong of the test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), as interpreted by *Hill v. Lockhart*, 474 U.S. 52, 59 (1985), which he must satisfy in order to prevail on a claim of ineffective assistance of counsel.

Opinion by: Mark D. Pfeiffer, Judge

June 16, 2015

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